



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 289**

September 22, 2005 - Offered by Senator ROESSLER.

1 **AN ACT** *to repeal* 940.225 (1) (c); *to renumber* 940.225 (2) (a) and 948.02 (1); *to*
2 *amend* 48.366 (1) (a) (intro.), 939.62 (2m) (b) 2. and 940.03; and *to create*
3 948.02 (1) (b) of the statutes; **relating to:** penalties for sexual assault offenses
4 involving force or violence treating first- or second-degree sexual assault as a
5 two-strikes offense and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, if a person uses or threatens to use force or violence to have sexual contact or sexual intercourse with another person without the other person's consent, the person is guilty of second-degree sexual assault, which is a Class C felony. A person convicted of a Class C felony may be fined up to \$100,000 or sentenced to a term of imprisonment of up to 40 years (which, as in other cases, consists of a term of confinement followed by a term of extended supervision if the sentence is for more than one year) or both. Under this substitute amendment, that offense is reclassified as first-degree sexual assault, which is a Class B felony. A person convicted of a Class B felony may be sentenced to a term of imprisonment of up to 60 years. (No fines are imposed for Class B felonies.)

Current law also prohibits having sexual contact or sexual intercourse with a child. If the victim is less than 13 years old, the offender is guilty of first-degree sexual assault of a child (a Class B felony). If the victim is 13, 14, or 15 years old, the

offender is guilty of second-degree sexual assault of a child (a Class C felony). Under this substitute amendment, if a person has sexual contact or sexual intercourse with a child who is 13, 14, or 15 years old by using or threatening to use force or violence, the person is guilty of first-degree sexual assault of a child.

In addition, current law requires certain repeat offenders to be sentenced to life imprisonment without the possibility of release to parole or extended supervision. The “three-strikes” version of the statute subjects a person to mandatory life imprisonment if he or she commits a serious felony after having been convicted on two or more separate occasions of a serious felony. (Current law defines “serious felony” to include homicide, aggravated battery, kidnapping, arson, aggravated burglary, carjacking, armed robbery, first- and second-degree sexual assault, first- and second-degree sexual assault of a child, aggravated child abuse, sexual exploitation of a child, and child enticement.) The “two-strikes” version of the statute subjects a person to mandatory life imprisonment if he or she commits a serious child sex offense after having been convicted of a separate serious child sex offense. (“Serious child sex offenses” means sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest with a child, child enticement, soliciting a child for prostitution, sexual assault of a student by a school staff member, child abduction, or kidnapping a child.) This substitute amendment makes first-degree sexual assault and second-degree sexual assault two-strikes offenses.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.366 (1) (a) (intro.) of the statutes is amended to read:

2 48.366 (1) (a) (intro.) Subject to par. (c), if the person committed any crime
3 specified under s. 940.01, 940.02, 940.05, 940.21, 940.225 (1) (a) to (e), 948.03 or
4 948.04, is adjudged delinquent on that basis and is placed in a secured correctional
5 facility under s. 48.34 (4m), 1993 stats., the court shall enter an order extending its
6 jurisdiction as follows:

7 **SECTION 2.** 939.62 (2m) (b) 2. of the statutes is amended to read:

8 939.62 (2m) (b) 2. The actor has been convicted of a serious child sex offense
9 or a violation of s. 940.225 (1) or (2) on at least one occasion at any time preceding
10 the date of ~~violation of the serious child sex offense~~ or the violation of s. 940.225 (1)

1 or (2) for which he or she presently is being sentenced under ch. 973, which conviction
2 remains of record and unreversed.

3 **SECTION 3.** 940.03 of the statutes is amended to read:

4 **940.03 Felony murder.** Whoever causes the death of another human being
5 while committing or attempting to commit a crime specified in s. 940.225 (1) ~~or (2)~~
6 ~~(a)~~, 943.02, 943.10 (2), 943.23 (1g), or 943.32 (2) may be imprisoned for not more than
7 15 years in excess of the maximum term of imprisonment provided by law for that
8 crime or attempt.

9 **SECTION 4.** 940.225 (1) (c) of the statutes is repealed.

10 **SECTION 5.** 940.225 (2) (a) of the statutes is renumbered 940.225 (1) (d).

11 **SECTION 6.** 948.02 (1) of the statutes is renumbered 948.02 (1) (a).

12 **SECTION 7.** 948.02 (1) (b) of the statutes is created to read:

13 948.02 (1) (b) Whoever, by use or threat of force or violence, has sexual contact
14 or sexual intercourse with a person who has not attained the age of 16 years is guilty
15 of a Class B felony.

16 **SECTION 8. Initial applicability.**

17 (1) TREATING FIRST- OR 2ND-DEGREE SEXUAL ASSAULT AS A "2-STRIKES" OFFENSE. The
18 treatment of section 939.62 (2m) (b) 2. of the statutes first applies to persons who
19 commit a serious child sex offense, as defined in section 939.62 (2m) (a) 1m. of the
20 statutes, or who violate section 940.225 (1) or (2) of the statutes on the effective date
21 of this subsection but does not preclude the counting of prior serious child sex
22 offenses or prior violations of section 940.225 (1) or (2) of the statutes for the purpose
23 of determining whether the person is a persistent repeater under section 939.62 (2m)
24 (b) 2. of the statutes.

25 (END)